

Hearing:
June 25, 1997

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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Life Corporation
v.
Carefree Trading Corporation

Cancellation No. 22,815

Cynthia Clarke Weber of Sughrue, Zinn, Macpeak & Seas for
Life Corporation.

Hanes M. Gibson and Dickerson M. Downing of Morgan &
Finnegan, L.L.P. for Carefree Trading Corporation.

Before Hohein, Hairston and Walters, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge.

Life Corporation has petitioned to cancel the
registration owned by Carefree Trading, Inc. for the mark
LIFE MASK for a "face mask for applying Cardiac Pulmonary
Resuscitation (CPR)."¹ As grounds for cancellation,
petitioner alleges that it manufactures and sells emergency

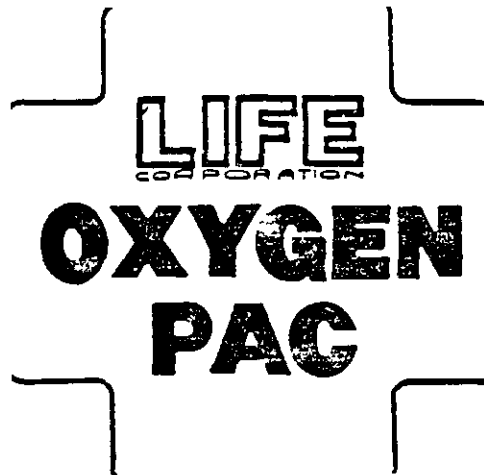
¹ Registration No. 1,781,271, issued July 13, 1993 from an
application filed on November 2, 1992, which sets forth dates of
first use of March 30, 1989. The word "MASK" has been
disclaimed apart from the mark as shown.

first aid equipment including resuscitators and inhalators; that prior to respondent's claimed dates of first use, petitioner has used the term LIFE as its trade name, corporate name and trademark for its products both alone and combined with descriptive terms; that petitioner is the owner of registrations for the following marks: (a) LIFE CORPORATION² which is registered in the stylized form below



LIFE
CORPORATION

and (b) LIFE CORPORATION OXYGEN PAC³ which is registered in the stylized form below;



LIFE
CORPORATION
OXYGEN
PAC

² Registration No. 1,614,750, issued September 25, 1990 from an application filed on January 23, 1990, which sets forth dates of first use of April 1986; Sections 8 & 15 affidavit filed. The word "CORPORATION" has been disclaimed apart from the mark as shown

³ Registration No. 1,654,258, issued August 20, 1991 from an application filed on January 23, 1990, which sets forth dates of first use of April 1986; Sections 8 & 15 affidavit filed. The words "OXYGEN" and "CORPORATION" have been disclaimed apart from the mark as shown

that petitioner is the owner of an application for the mark LIFE-O2⁴ in typed capital letters; that such marks are all for "emergency oxygen equipment, namely, resuscitators and inhalators", and that respondent's mark so resembles petitioner's previously used and registered mark LIFE as to be likely to cause confusion, mistake or deception.

Respondent, in its answer, has denied the salient allegations of the petition to cancel.

The record consists of the pleadings and the testimony depositions of petitioner's and respondent's witnesses, with exhibits. In addition, respondent submitted notices of reliance on third-party registrations for marks which cover goods of the type involved herein and include the word LIFE and excerpts from the 1995 edition of the Medical Device Register. The excerpts are listings of medical suppliers with the word LIFE in their trade names. Both parties filed briefs on the case and were represented at the oral hearing.

The record shows that petitioner sells emergency oxygen units and replacement parts therefore. These units may be used for either resuscitation (for a non-breathing victim) or inhalation (for a breathing victim). Petitioner's emergency oxygen units are sold in portable or wall mountable form for use in virtually any location where an

⁴ Serial No. 74/260,319 filed March 1992, which sets forth dates of first use of May 19, 1985. We note that this application matured into Registration No. 1,847,117 on January 9, 1996.

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emergency situation requiring resuscitation or inhalation might occur. Each unit sells for approximately \$350.00 at retail and includes a case, cylinder, valve, regulator, hose and mask. According to petitioner's president, Mr. Kirchgeorg, petitioner has used LIFE CORPORATION as its trade name since at least as early as 1986. Additionally, Mr. Kirchgeorg testified that since 1986 petitioner has used LIFE CORPORATION as depicted in Registration No. 1,614,750 as a trademark for emergency oxygen units and replacement parts such as regulators, cylinder assemblies and masks, and LIFE CORPORATION OXYGEN PAC as depicted in Registration No. 1,654,258 as a trademark for emergency oxygen units. Further, the evidence shows that petitioner has used LIFE in capital block letters with model numbers and with the designation OXYGEN PAC on materials such as price lists and invoices.

Petitioner sells its emergency oxygen units and replacement parts primarily to distributors of safety and medical equipment. The end users of these units include government agencies, fast food restaurants, hotels, fitness centers, fire and rescue departments, and industrial facilities.

Petitioner promotes and advertises its products at trade shows and in publications directed to the health and safety industry. Petitioner's emergency oxygen units have

been reviewed in a number of health and safety publications. In addition, petitioner's emergency oxygen units were featured in the NBC television series SEA QUEST. According to Mr. Kirchgeorg, there were 44 hourly shows over a two-year period beginning in September 1993, followed by reruns.⁵

Respondent manufactures and distributes masks and related products for emergency resuscitation. According to respondent's president, Rick Stockett, respondent has used the mark LIFE MASK for a CPR mask with a one-way valve continuously since 1989. Respondent's masks, some of which include bacterial and/or viral filters, range in price from \$1.75 to \$7.00.

Respondent's masks are marketed primarily to the medical and emergency care industries; fire, rescue and police personnel, and original equipment manufacturers. Respondent promotes its products through a nationwide distribution network, direct advertising, trade show exhibitions and advertisements which appear in trade publications."

Turning first to the issue of priority, the testimony of petitioner's president, Mr. Kirchgeorg, establishes petitioner's prior use of the trade name LIFE CORPORATION,

⁵ The testimony of Mr. Kirchgeorg concerning petitioner's sales and advertising expenditures was introduced under seal

⁶ The testimony of Mr. Stockett concerning respondent's sales and advertising expenditures was likewise introduced under seal

the trademark LIFE CORPORATION for emergency oxygen units and replacement parts, including masks, and the trademark LIFE CORPORATION OXYGEN PAC for emergency oxygen units. As these marks are actually used, the word LIFE creates a separate commercial impression, and thus petitioner has rights in LIFE per se. Moreover, the evidence shows that petitioner has used LIFE in capital block letters in price lists and invoices prior to respondent's claimed date of first use.

We turn next to the issue of likelihood of confusion. Upon consideration of the relevant factors set forth in *In re E. I. du Pont de Nemours & Co* , 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, it is our view that confusion as to source or sponsorship is likely to occur.

In the present case, there plainly is no question that petitioner's goods are identical in part and are otherwise closely related to respondent's goods. Both petitioner's emergency oxygen units and respondent's masks are used for resuscitation. We note that respondent's masks may be used in petitioner's emergency oxygen units and that the parties discussed the possibility of petitioner purchasing masks from respondent for use in petitioner's units. In addition, the record indicates that since 1986 petitioner has also sold masks in packaging which bears the trade name and

trademark LIFE CORPORATION. Further, the record shows that the parties' have promoted their goods at some of the same trade shows. Finally, the record shows that the parties' goods move in the same channels of trade to the same classes of purchasers. In sum, petitioner's emergency oxygen units and replacement parts and respondent's masks are closely related and identical in the case of masks.

Turning then to petitioner's trade name and mark LIFE CORPORATION, its trademark LIFE CORPORATION OXYGEN PAC and respondent's mark LIFE MASK, the dominant portion in each is the word LIFE. Because petitioner has consistently over the years displayed the word LIFE in a large and distinctive fashion on its goods and literature, there can be no question that the significant and dominant feature of petitioner's trade name and trademarks is the word LIFE and that purchasers of petitioner's goods as well as those exposed to petitioner's literature will be likely to utilize this term to identify and distinguish both petitioner and its goods. Moreover, the dominant portion of respondent's mark is the word LIFE, as MASK is clearly generic for respondent's goods. Thus, when we compare the parties' trade name and marks in their entireties, giving appropriate weight to the word LIFE in each, we find that they are substantially similar in sound, appearance and commercial impression.

We acknowledge that the word LIFE is highly suggestive as to the goods of the parties. Petitioner's president, Mr. Kirchgeorg, testified that he selected the name LIFE CORPORATION because his company is in the "life support business." (Deposition, p. 163). Also, the third-party registrations, although not evidence that the marks shown therein are in use or that the public is familiar with them, are competent to show that others in the field have adopted and registered marks containing the word LIFE, and that as used in connection with resuscitators and masks, such word suggests "life support."⁷ See *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404, 1406 (TTAB 1988), citing *American Hospital Supply Corp. v. Air Products and Chemicals, Inc.*, 194 USPQ 340, 343 (TTAB 1977). In this case, the fact that LIFE is suggestive of the parties' goods does not help to distinguish respondent's mark LIFE MASK from petitioner's trade name and trademarks consisting of LIFE. The word LIFE, as used by both parties, conveys the same suggestive significance, and the additional word MASK in respondent's mark does not change the overall commercial impression of the mark. Moreover, even weak marks are entitled to protection where confusion is likely, and here,

⁷ The listings from the 1995 edition of the Medical Device Register and the evidence of third-party use of LIFE in advertisements is cumulative of the third-party registrations in showing the sense in which the word LIFE is employed in the field.

applicant's mark LIFE MASK is substantially similar in sound, appearance and commercial impression to petitioner's trade name and trademarks consisting of LIFE. Further, we note that none of the marks in the third-party registrations is as similar to petitioner's trade name and marks as is respondent's mark LIFE MASK. That is, none of the marks in the third-party registrations consists of the word LIFE combined with a descriptive or generic term.

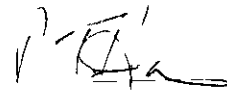
In reaching our decision, we recognize that because the products involved herein are used in specialized life saving situations, they are primarily purchased not by the general public, but rather by sophisticated purchasers with a specific application in mind. Be that as it may, even sophisticated purchasers are not immune to source confusion, especially in cases like the present one where identical and closely related goods are marketed under substantially similar marks and trade name.


In reaching our decision, we have accorded little weight to the testimony of Mr. Kirchgeorg concerning instances of actual confusion. Mr. Kirchgeorg testified that within the last two years, he received a "couple" of telephone calls wherein the callers "inquired about a Life Mask." (Deposition, p. 108) However, the testimony is sketchy and thus entitled to little weight on the issue of likelihood of confusion.

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Decision: The petition for cancellation is granted.


G. D. Hohehn


P. T. Hairston


C. E. Walters
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

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